

## REMARKS

Claims 1-20 are pending in this application.

### *Inventorship*

The Patent Office raised a question of inventorship.

Applicant submits inventorship is correct. Exhibit A of the 131 declaration lists two inventors, Ning Xue and Darren Neuman. Both of these inventors are named inventors of this patent application.

### *Claim Rejections – 35 USC § 112*

The Patent Office rejected claims 2-4, 9-11 and 16 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

Applicant respectfully disagrees. Applicant respectfully submits that claims 2-4, 9-11 and 16 have been described in the specification.

Average mean and average variance is described on page 7, lines 23-28 and in FIG. 5. The abstract of the invention specifically states that “in the event a predetermined condition is satisfied where the condition may be based upon the calculated average mean and average variance values.” (Emphasis added). Consequently, Applicant respectfully submits claims 2-4, 9-11 and 15 have been adequately described for a person of ordinary skill in the art.

### *Claim Rejections – 35 USC § 102*

The Patent Office rejected claims 1-7 under 35 U.S.C. § 102(e) as being anticipated by Westerman, United States Patent 6,529,638, (Westerman).

*Claim Rejections – 35 USC § 103(a)*

The Patent Office rejected claims 8-20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Westerman, United States Patent 6,529,638, (Westerman) in view of Andrew, United States Patent 6,563,958, (Andrew).

Applicant respectfully disagrees. Applicant further traverses the assertion by the Patent Office that the Declaration of Prior Invention, filed on December 15, 2003, hereinafter (Declaration) under 37 CFR 1.131 is ineffective to overcome Westerman.

Inventors, Ning Xue and Darren Neuman, conceived of the invention at a date prior to February 1, 1999. A drawing, found in a notebook, supporting the conception was prepared by the inventors (See First Page of Exhibit A of Declaration). This notebook is unavailable as both inventors are no longer employed by Applicant.

As noted, testing of the device was executed in July, 1999. (See First Page of Exhibit A of Declaration).

An invention disclosure form, prepared and signed by both named inventors, Ning Xue and Darren Neuman (See bottom of First Page of Exhibit A of Declaration), was prepared and submitted to the Intellectual Property Department of Applicant on September 2, 1999 (See middle of First Page of Exhibit A). This invention disclosure was further witnessed, read and understood by Wen Huang, his signature noted on the First Page of Exhibit A of Declaration.

Included within the disclosure to the Intellectual Property Department of Applicant, were 4 documents as noted by the Patent Office. (Office Action, Page 5). Both inventors, Ning Xue and Darren Neuman, prepared and submitted the Invention Disclosure that included "Purpose and Development" paper, 12 slides and block diagrams. Applicant respectfully submits that the four documents, received by the Intellectual Property Department of Applicant on September 2, 1999, in combination

describe each element of each claim of the instant application. The Invention Disclosure form, which included the four documents, was signed and dated by both inventors, Ning Xue and Darren Neuman. Each of the dates corresponding to dates of submission have been blocked out as permitted under MPEP 715.07.

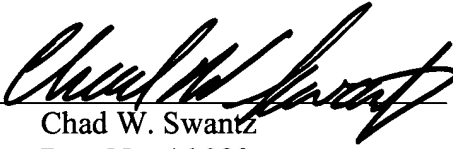
Consequently, it is respectfully submitted that the Declaration submitted December 15, 2003 is effective to remove Westerman which has a filing date of February 1, 1999 as a prior art reference under the provisions of 37 C.F.R. § 1.131 and that Claims 1-20 are therefore allowable. Accordingly, a timely Notice of Allowance is earnestly solicited.

CONCLUSION

In light of the forgoing, reconsideration and allowance of the claims is earnestly solicited.

Respectfully submitted,  
LSI Logic, Inc.

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